IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF OHIO

CHARLES OSZUST,

Plaintiff,

v. Civil Action No.: 2:15-CV-2950

WESTROCK SERVICES, INC. f/k/a

ROCK-TENN SERVICES, INC.,

Defendant.

COMPLAINT

COMES NOW the Plaintiff, Charles Oszust, by counsel, Mark A. Kepple, Esq., and the law firm of Bailey and Wyant, PLLC, and states for his complaint as follows:

This action arises from the actions of the Defendant, WestRock Services, Inc., f/k/a Rock-Tenn Services, Inc., (hereafter "Defendant" or "Rock-Tenn,") to deliberately harm, discriminate, retaliate, harass, inflict emotional distress upon, and ultimately constructively dismiss Plaintiff Charles Oszust (hereafter "Plaintiff" or "Oszust,"). Plaintiff seeks punitive and compensatory damages, including incidental and consequential damages, lost wages, and reimbursement for reduction of retirement benefits from Rock-Tenn based on its actions in dealing with Oszust.

PARTIES:

1. Plaintiff Charles Oszust is a 63-year-old Ohio citizen from Tuscarawas County, Ohio.
2. Defendant WestRock Services, Inc., is an American paper and packaging manufacturer whose principal place of business is located at 504 Thrasher St., Norcross, Georgia 30071, and is also incorporated in the State of Georgia. Defendant maintains business locations throughout Ohio,

including a corrugated containerboard packaging plant at 500 N. Fourth Street, Coshocton, Ohio 43812.

3. At all times relevant to this matter, Defendant was known as "Rock-Tenn Services, Inc."

4. According to Rock-Tenn's filings with the Ohio Secretary of State, it changed its name to "WestRock Services, Inc." on October 13, 2015.

JURISDICTION AND VENUE:

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), which confers original jurisdiction on this Court to hear civil actions between citizens of different States where the matter in controversy exceeds the sum or value of $75,000.00.

6. Plaintiff Charles Oszust is a citizen of Ohio.

7. Defendant Westrock Services, Inc., is a citizen of Georgia.

8. Plaintiff has alleged damages in excess of $75,000.00.

9. Therefore, jurisdiction and venue lies properly with this Court.

FACTS:

10. On or around November 14, 2013, Plaintiff suffered from diabetes, as well as various back problems resulting from prior documented on-the-job injuries.

11. Plaintiff made Defendant fully aware of his conditions at some time before the aforementioned date.

12. Because of Plaintiff's conditions, he is required to avoid overly-stressful situations, and is not to remain sedentary for long periods of time.

13. On or around November 14, 2013, Rock-Tenn management informed Oszust that he was to be moved to a Pulp Mill Operator's job.

14. Plaintiff subsequently informed the company nurse that he had only worked as a Pulp Mill Operator once in the past, that the physical and mental demands of the Pulp Mill Operator's job were certain to have adverse effects of his health, and that specifically, due to his health conditions, he was unable to be sedentary for the length of time the Pulp Mill Operator's job required.
15. The company nurse did not assist Oszust in any way. Rather, she explained to Oszust that he would have to express his concerns to management.
16. Oszust then approached management and explained that he objected to be moved to a different position.
17. Plaintiff also explained to management that he was concerned about the amount of mental and physical stress he would undergo doing said job, and the sedentary nature of the position.
18. Plaintiff subsequently requested a "reasonable accommodation," which was denied without explanation. Plaintiff then asked to be granted a "medical freeze," which was also denied without explanation.
19. On November 18, 2013, Plaintiff completed an eight-hour shift as the Pulp Mill Operator. Upon completion of the shift, Plaintiff experienced pain in his back and legs, blurred vision, lack of concentration, and headaches, as well as other related symptoms of spiking blood sugar related to Plaintiff's diabetes.
20. Due to these symptoms, as well as job-related anxiety and stress, Oszust barely slept that night.
21. Plaintiff reported to work the following day, November 19, 2013. During his shift, Plaintiff again began experiencing shortness of breath, back pain, and leg pain.

22. Plaintiff then asked a co-worker to watch his post, and walked outside of his office in an attempt to breathe fresh air and stretch his legs and back.

23. Immediately after leaving the office, Plaintiff lost consciousness and collapsed. He then fell down a flight of steps, and was subsequently transported via ambulance to Coshocton Hospital.

24. Due to his critical condition, Plaintiff was then transported via helicopter to Aultman Hospital in Canton, Ohio, where it was determined that Plaintiff had suffered a stress-related syncopal episode.

25. On January 6, 2014, upon his release from the hospital, Plaintiff obtained a complete work release from his doctor, and attempted to return to his previous position.

26. Despite the release from Plaintiff's physician, Defendant refused to allow Plaintiff to return to work.

27. Plaintiff then hired an attorney, who, based upon information and belief, contacted Defendants in regards to Plaintiff's employment situation.

28. Defendant then allowed Plaintiff to return to work, despite the fact that no fact or circumstance had changed since Defendant denied his previous request to return to work.

29. Shortly thereafter, Plaintiff was forced to sign an agreement stating that he would be terminated if any future issues at work arose.

30. Due to the unbearable stress, hardship, and pressure placed on Plaintiff, he retired on or around September 28, 2014.

COUNT I
Deliberate Intent to Injure

31. Plaintiff incorporates paragraphs 1-30, *supra*.

32. At all times herein, Defendant was cognizant to Plaintiff's medical problems, including diabetes and significant back problems.

33. On and in the week before November 18, 2013, Plaintiff informed Defendant's medical and management staff that he could not work as a pulp Mill Operator due to the constraints the job placed on his mobility, the stress he would suffer from doing the job, and the substantially certain negative reaction between the job and his diabetes.

34. Defendant knew of Plaintiff's medical conditions, and continued to subject Plaintiff to a process, procedure or condition which was so dangerous to Plaintiff that harm to him was a substantial certainty.

35. Over Plaintiff's repeated protests, Defendant required the Plaintiff to perform the Pulp Mill Operator Job.

36. Plaintiff subsequently suffered mental stress, pain in his back and legs, blurred vision, and ultimately, collapsed and fell down a flight of stairs, requiring his transportation to two separate hospitals.

37. As a result of Defendant's willful, wanton and deliberate decision to force Plaintiff to do a job which was substantially certain to cause him physical and mental harm, Plaintiff was directly, proximately, and foreseeable damaged and should be awarded compensatory and punitive damages, including incidental and consequential damages, in an amount to be determined by this Court.

COUNT II
Constructive Discharge

38. Plaintiff incorporates paragraphs 1-37, *supra*.

39. Plaintiff was forced to work as a Pulp Mill Operator, a job which he was physically and mentally incapable of doing, and which ultimately harmed him physically and mentally.

40. Upon his release from the hospital, Plaintiff was subsequently barred from returning to work.

41. Plaintiff was forced to hire an attorney, who, based on information and belief, threatened Defendants that Plaintiff would pursue legal remedies if not permitted to return to work.

42. Seeking advice from an attorney is a protected action under Ohio state law.

43. Plaintiff was then forced to sign an agreement that would terminate his employment if he violated an unclear standard for behavior.

44. Plaintiff additionally endured other mistreatment by Defendant's management staff, including intimidation, subtle and overt threats, and other hardships.

45. Plaintiff, as a reasonably prudent person, believed that his termination was imminent.

46. Due to the mistreatment he suffered, Plaintiff subsequently retired on September 28, 2014.

47. Plaintiff was therefore constructively discharged and accordingly should be awarded back pay, lost wages, compensatory and punitive damages in an amount to be determined by this Court.

COUNT III
Disability Discrimination

48. Plaintiff incorporates paragraphs 1-47, *supra.*

49. At all times relevant to this action, plaintiff suffered from diabetes, as well as back problems from two separate surgeries.

50. At all times relevant to this action, Defendant was aware of Plaintiff's disabilities.

51. Plaintiff was able, despite his disabilities, to perform his job as a Pulp Mill Operator Assistant effectively.

52. At all times relevant to his action, Defendant was aware that Plaintiff was capable of performing his job as a Pulp Mill Operator Assistant effectively.

53. Following Plaintiff's collapse at work and subsequent hospital stay, Defendant refused to allow Plaintiff to return to work, in part, because of his disability.

54. Plaintiff was forced to hire an attorney, who, based upon information and belief, threatened Defendants that Plaintiff would pursue legal remedies if not permitted to return to work. Plaintiff was subsequently permitted to return to work.

55. Hiring an attorney is a protected action under Ohio state law.

56. Plaintiff was then forced to sign an agreement that would terminate his employment if he violated an unclear standard for behavior.

57. Plaintiff additionally endured other mistreatment by Defendant's management staff, including intimidation, subtle and over threats, and other hardship, in part due to his disability.

58. Plaintiff, as a reasonably prudent person, believed that his termination was imminent.

59. Due to his fear of losing his pension, and the mistreatment he suffered over the last two years, Plaintiff subsequently retired in September 2014.

60. Plaintiff was therefore discriminated against because of his disability and accordingly should be awarded back pay, lost wages, compensatory and punitive damages in an amount to be determined by this Court.

COUNT IV
Retaliatory Discharge

61. Plaintiff incorporates Paragraphs 1-60, *supra.*

62. Following Plaintiff's collapse at work and subsequent hospital stay, Defendant refused to allow Plaintiff to return to work, in part, because of his disability.

63. Plaintiff was forced to hire an attorney, who, based on information and belief, threatened Defendants that Plaintiff would pursue legal remedies if not permitted to return to work. Plaintiff was subsequently permitted to return to work.

64. Seeking advice from an attorney is a protected action under Ohio state law.

65. Plaintiff was then retaliated against and forced to sign an agreement that would terminate his employment if he violated an unclear standard for behavior.

66. Plaintiff additionally endured other mistreatment by Defendant's management staff, including intimidation, subtle and overt threats, and other hardships in part as a result of his previous consultation with an attorney.

67. Plaintiff, a reasonable prudent person, believed that his termination was imminent.

68. Due to the mistreatment he suffered over the years, Plaintiff subsequently retired on or around September 28, 2014.

69. Plaintiff was therefore discriminated against, and retaliated against, because of his threat of legal action, and accordingly should be awarded back pay, lost wages, compensatory and punitive damages in an amount to be determined by this Court.

COUNT V
Intentional Infliction of Emotional Distress

70. Plaintiff incorporates paragraphs 1-69, *supra*.

71. On November 14, 2013, Defendant, against Plaintiff's objections, mandated that Plaintiff work the following week as Pulp Mill Operator.

72. On and during the week before November 18, 2013, Plaintiff informed Defendant's medical and management staff that the could not work as a Pulp Mill Operator due to the constraints the job placed on his mobility, the stress he would suffer from doing the job, and the substantially certain negative reaction between the job and his diabetes.

73. Defendant ignored and downplayed Plaintiff's legitimate medical concerns, and forced Plaintiff to work as a Pulp Mill Operator starting on November 18, 2013.

74. On November 18, 2013, Plaintiff completed an eight-hour shift as the Pulp Mill Operator. Upon completion of the shift, Plaintiff experienced pain in his back and legs, blurred vision,

lack of concentration, and headaches, as well as other related symptoms of spiking blood sugar related to Plaintiff's diabetes.

75. Due to these symptoms, as well as job-related anxiety and stress, Oszust barely slept that night.

76. The following day, Plaintiff subsequently suffered mental stress, pain in his back and legs, blurred vision, and ultimately, collapsed and fell down a flight of stairs, requiring his transportation to two separate hospitals.

77. Following Plaintiff's collapse at work and subsequent hospital stay, Defendant refused to allow Plaintiff to return to work, in part, because of his age.

78. Plaintiff was forced to hire an attorney, who, based on information and belief, threatened Defendants that Plaintiff would pursue legal remedies if not permitted to return to work. Plaintiff was subsequently permitted to return to work.

79. Seeking advice from an attorney is a protected action under Ohio state law.

80. Plaintiff was then forced to sign an agreement that would terminate his employment if he violated an unclear standard for behavior.

81. Plaintiff additionally endured other mistreatment by Defendant's management staff, including intimidation, subtle and overt threats, and other hardships.

82. Based on the above facts, Defendant intended to cause Plaintiff emotional distress, first by making him do a job for which he was mentally and physically unsuited, then by refusing to allow him to return to work, and finally by harassing and intimidating Plaintiff into retiring. Defendant's conduct in this regard was outrageous, and is utterly intolerable in a civilized community. Finally, Defendant is the direct and proximate cause of Plaintiff's serious emotional distress.

83. Plaintiff therefore suffered extreme and intentional emotional distress due to Defendant's actions, and therefore seeks punitive and compensatory damages, including incidental and consequential damages, lost wages, and reimbursement for reduction of retirement benefits due to Defendant's intentional infliction of emotional distress.

WHEREFORE, Charles Oszust, Plaintiff, demands judgment against the Defendant, in an amount in excess of $75,000.00, to be determined by the Court, for the above-stated relief, including punitive and compensatory damages, including incidental and consequential damages, lost wages, reimbursement for reduction of retirement benefits, and back pay, together with interest, costs, reasonable attorney's fees, and such other relief as the Court deems just and appropriate.

PLAINTIFF DEMANDS A JURY TRIAL.

CHARLES OSZUST
By Counsel

Mark A. Kepple, Esq.
Ohio Bar ID # 0069253
Bailey & Wyant, P.L.L.C.
1219 Chapline Street
Wheeling, WV 26003
Phone: (304) 233-3100
Fax: (304) 233-0201
bclark@baileywyant.com
mkepple@baileywyant.com